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HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 986th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 July 1990, at 10 a.m.

Chairman: Mr. COORAY

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Consideration of reports submitted by States parties under article 40 of the Covenant

Viet Nam (continued)

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GE.90-16587/2306B

The meeting was called to order at 10.30 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Viet Nam (CCPR/C/26/Add.3) (continued)

1. The CHAIRMAN invited the Vietnamese delegation to reply to the questions raised by the members of the Committee and to make any comment that it might deem necessary.

2. Mrs. BA THANH (Viet Nam) said that the Vietnamese delegation had listened attentively to the questions raised by the members of the Committee, which reflected the interest that the latter had shown in the initial report.

3. With regard to the relationship between international instruments and domestic legislation, the Vietnamese authorities recognized that the application of those instruments did not depend solely on constitutional or legislative enactments, which were generally insufficient. She gave three examples of international instruments that had been ratified by the Socialist Republic of Viet Nam, in order to illustrate the manner in which their provisions were being implemented. On 17 July 1980, the Vietnamese Government had signed the Convention on the Elimination of All Forms of Discrimination against Women, which the Council of State, a permanent organ of the National Assembly, had ratified on 27 November 1981. Shortly afterwards, a new article of the Penal Code had been promulgated, under which any violation of the principle of the equal rights of women constituted an offence. On 26 January 1990, the Government had signed the Convention on the Rights of the Child, which the Council of State had ratified on 20 February 1990. Viet Nam, which was the first Asian country and the second country in the world to ratify the Convention, had immediately undertaken a programme of action at the national, regional and international levels to give effect to the provisions of that instrument, in particular by drafting a new law to replace the former decree on the care, education and protection of children. Finally, Viet Nam had acceded to the International Covenant on Civil and Political Rights on 24 September 1982. Although there had been a delay in the fulfilment of its obligation to submit an initial report, it felt that it had now fulfilled that obligation in an appropriate and opportune manner within the framework of the process of general renovation in keeping with the principle of the rule of law. The example of the other two conventions showed that, in general, Viet Nam was taking the measures needed to give rapid effect to the instruments that it had ratified. In the case of the Covenant, the delay had been caused by a number of technical difficulties. However, it also had to be admitted that reasons of a bureaucratic nature were not fully excusable.

4. With regard to the signature, ratification and application of international instruments, an order in Council had recently been adopted, containing directives which all government agencies would henceforth have to follow at all the procedural stages from the preliminary negotiations to the stage of application. Some international treaties and instruments could be ratified by a simple government decree, whereas others required the approval of the National Assembly. The manner in which the instrument was ratified (government decree or legislation passed by the National Assembly) determined

its binding force. Moreover, the Vietnamese delegation would have absolutely no objection if the Committee felt obliged to send strong reminders to its country on the subject of the fulfilment of its obligations.

5. The process of renovation that had begun in Viet Nam was having an impact in all fields, and particularly on the economy. Since the Sixth Congress of the Communist Party, the State and the collective enterprises were no longer the only constitutionally recognized economic sectors. Henceforth, private enterprises, collective enterprises, family enterprises and joint ventures with foreign partners would also be regarded as economic sectors. The National Assembly had recently amended the law on investments in such a way as to enable Vietnamese citizens to engage in private trade with foreigners. Henceforth, economic relations would be based on free enterprise. In the event of dispute, there was still a system of arbitration and the partners could also apply to the courts. All those innovations had inevitably posed some problems, which Viet Nam was gradually overcoming. At all events, they denoted a profound change in mentality. That change was also evident from the fact that the Vietnamese delegation was headed by a representative of a legislative body, which would have been inconceivable only two years previously. It would also have been unthinkable for a woman, who had studied in the West and was not a member of the Party, to be appointed President of the Legislative Commission of the National Assembly. However, that was taken for granted today.

6. The renovation also affected the legislative field. All laws must henceforth be adopted by a two-thirds majority, rather than unanimously as in the past. The Constitution could also be amended by legislative enactments.

7. Some members of the Committee had shown an interest in the partition of the country between North Viet Nam and South Viet Nam. Reunification constituted a great opportunity for the country since, far from being hostile to their brothers, the citizens of the two former parts were living in a spirit of harmony and co-operation. Although South Viet Nam had indeed been subjected to the yoke of neo-colonialism, the fact that its intellectuals had been trained at the best universities would now stand the reunified country in good stead.

8. Concerning the role of the Communist Party, it should be realized that the introduction of pluralism, which some deemed desirable, would take a long time and, moreover, was hardly in keeping with the Vietnamese mentality. In fact, during the neo-colonial period, although the country had had as many as 45 parties, it had been far from resembling a democracy. Although the Communist Party continued to exist, the sole organ vested with constitutional and legislative powers was the National Assembly, in the operation of which the Party never interfered.

9. Viet Nam firmly intended to make further progress in the application of the Covenant. However, it was faced with tremendous problems, largely due to the fact that it was isolated and impoverished, being the only country in the world that had never obtained payment of the war reparations to which it was entitled. The Government of the United States was refusing to pay war reparations because of the "Cambodian question". In that connection, she felt that, regardless of the solution that might be found, there was no possibility of the Pol Pot régime returning to power.

READER

10. The members of the Committee had expressed the opinion that some provisions of the Vietnamese Constitution were incompatible with the Covenant. However, most of those provisions were no longer applicable. A new constitution was currently being drawn up, primarily with a view to ensuring a new balance of power in favour of the National Assembly, in which popular participation was as extensive as possible.

11. In spite of all those difficulties, Viet Nam had gained a certain degree of experience, which it would be able to share while, for its part, benefiting from the experience of others. She hoped that United Nations bodies would help Viet Nam to continue on the path of progress that it had set for itself, without the country having to suffer any interference in its internal affairs.

12. She provided some clarifications concerning the system of re-education camps, which the Western world had condemned as a violation of human rights. First of all, she pointed out that the General Assembly of the United Nations had called upon all States to incorporate the concept of crimes against humanity in their domestic legislation. She pointed out that, in her country, most of the offences assimilated to that category of crimes were punishable by the death penalty. However, if that penalty were applied to all the persons who had committed crimes against humanity in Viet Nam, it would have to be imposed on far too large a proportion of the population, and particularly a vast number of citizens of former South Viet Nam as well as their families! The only solution to that problem was a political solution, consisting in the promotion of national reconciliation and, to that end, it would be necessary to resort to re-education. She also pointed out that persons leaving a re-education camp once again became ordinary citizens who no longer bore any stigma of shame because of their past activities. She concluded her remarks on that question by requesting the support of the international community, emphasizing the fact that, in Viet Nam, the only framework within which it would be possible to tackle and solve the problems, including the refugee problem, was the policy of national reconciliation.

13. She recalled that, after the Second World War, Viet Nam, like most of the countries of South-East Asia, had not been regarded as a civilized nation by the international community and had therefore been obliged to follow its own method of defending human rights. For that reason, the country was understandably unwilling to compromise on the question of national or individual rights. Nevertheless, the Vietnamese authorites were convinced that considerable progress was still needed in the field of human rights. Suffering had made the Vietnamese people more mature and its leaders had an obligation to respond to its aspirations. Moreover, consideration of the Constitution, the Penal Code, the report and the information provided by her delegation would enable the members of the Committee to ascertain that there were already tangible differences between the legislation and the actual situation in the country, which was developing rapidly under the renovation programme. For its part, the international community should make the necessary effort to understand the real situation of a people that had entered a new era.

14. Mrs. HA THI NGOC HA (Viet Nam) replied first of all to the questions that had been raised concerning the right to leave or return to the country. That right was subject to various procedures that distinguished between three types of cases: (i) Vietnamese citizens who travelled abroad temporarily for

reasons such as tourism, study, research or a mission; (ii) citizens who travelled abroad for personal reasons, in order to visit members of their family, for example; and (iii) citizens who left the country to settle abroad. Special provisions applied to each of those categories. The last category (Vietnamese who left to settle abroad) was governed by an interministerial circular (issued by the Ministry of Foreign Affairs and the Ministry of the Interior) which imposed some restrictions on the emigration of certain persons, particularly scientific and technical personnel, skilled workers and persons in possession of national secrets or occupying key positions in government departments or State enterprises, who could not be replaced. Although those restrictions did not imply that the State was trying to prevent those persons from settling abroad, it was obviously not encouraging them to do so; the departure of highly qualified persons constituted a serious loss for a poor country that needed to retain all its skilled personnel.

15. In reply to a question concerning Viet Nam's policy in regard to the voluntary repatriation of refugees, she said that the "boat people" posed a real problem. In the 1970s and the early 1980s, within the context of the psychological war that they were waging in an attempt to denigrate Viet Nam, the Western countries had encouraged the illegal emigration of Vietnamese. Moreover, after so many years of war, which had devastated the country and its economy, many Vietnamese had fled in the hope of being able to settle in foreign countries where they would enjoy better living conditions. At the present time, a very large number of people were still living in refugee camps. Only a humanitarian approach and regard for international legal norms and the real situation in the countries concerned would make it possible to find a final solution to all aspects of the problem. The Vietnamese who had provisionally found asylum in some countries should be permitted to settle in third countries. At the same time, the Vietnamese authorities were encouraging voluntary repatriation. The Government had declared that voluntary repatriation from the countries of first asylum would take place under conditions that guaranteed the security and dignity of those persons, in accordance with domestic legislation and international law, and would not be accompanied by repressive or discriminatory measures. Those repatriated persons would be permitted to return to their place of origin or to another location of their choice, and the Government would facilitate their integration in normal life.

16. With regard to the steps taken to prevent the illegal departure of "boat people", the Government had issued several directives to the local administrative authorities responsible for the surveillance of coastal and border areas, in order to prevent preparations for departure. The media informed the population of the dangers at sea that awaited those who might wish to leave the country in that way, of the possibility of ill-treatment in the camps, and of the policy that the countries of first asylum were pursuing in regard to the refugees. Moreover, persons who organized and promoted the illegal departure of "boat people" were brought before the courts. Finally, the Vietnamese Government was encouraging the implementation of the Orderly Departure Programme that had been prepared in conjunction with UNHCR. The Government felt that co-operation among Governments, international organizations and the international community was absolutely essential for a solution of the refugee problem.

17. She then referred to freedom of movement and residence. Vietnamese citizens had the right to choose their place of residence freely and enjoyed freedom of movement. However, those rights were subject to some restrictions, which applied mainly to convicted persons, on grounds relating to public order and security rather than economic reasons. One of those restrictions prohibited convicted persons from residing in some economically important areas. The courts were competent to decide, in accordance with the relevant provisions of the Penal Code, which places of residence would be prohibited, as well as the duration of the prohibition and the individuals concerned.

18. Every Vietnamese citizen was issued with an identity card and a residence permit. The latter document, which did not confer any particular privilege on its holder and merely certified the place of domicile, was issued by the local police authorities. The system of residence permits was not designed to prevent citizens from electing domicile at the place of their choice. After the war, many people had sought to improve their living conditions and had left the countryside to settle in the towns, thereby creating an imbalance that had to be gradually rectified, and the introduction of the system of residence permits was one of the measures taken to that end.

19. The rights of foreigners were guaranteed by Act No. 122/CP of 24 May 1977, which also imposed some restrictions, particularly on the right to own real estate and to practise some professions, such as that of bus-driver, printer and typist. However, that Act was outdated and, within the context of the prevailing spirit of renovation in the country, a new Act was being drafted, the text of which would be transmitted to the Committee as soon as it had been adopted. With regard to freedom of association, Act No. 102-SL/L004 of 20 May 1957 was also outdated and a new Act on that question was being drafted. On its entry into force, the Vietnamese authorities would inform the members of the Committee of the conditions under which an association could be established.

20. Finally, she pointed out that no one had been arrested in Viet Nam for his religious beliefs.

21. Mrs. BA THANH (Viet Nam), remarking that she wished to place the Vietnamese situation in proper perspective and to dispel any doubts that might still be entertained by international opinion, emphasized the fact that the country was in no way divided between North and South. That was evident from the composition of the Communist Party and the Government, as well as the origins of the leaders of mass organizations and the representatives of the people, particularly in the Council of State (a permanent organ of the National Assembly). The question of the division of the country, which had arisen only under the colonialist and neo-colonialist régimes, had been largely transcended and Viet Nam was a united country, for better or worse. Moreover, the frank and open dialogue that had been established between the leaders of the country and the population was making a positive contribution to the furtherance of the process of renovation.

22. It was also important to dispel misunderstandings and remedy the lack of information concerning the situation of Vietnamese abroad. The Vietnamese Government was pursuing a new policy under which those persons would be permitted to return to Viet Nam and live there for a while, without renouncing their other nationality, in order to be able to rediscover their cultural and

family links, which was in full conformity with the principles of humanitarian law and in no way implied a provocative attitude. In that respect, the Vietnamese authorities were fully prepared to collaborate with all defenders of the cause of political or other refugees in the quest for acceptable solutions.

23. With regard to the questions concerning detention, she indicated that Directive No. 49, concerning administrative detention, was in no way illegal, since it derived from a decree of the Council of State. The Legislative Commission, of which she herself was a member, had indeed requested the amendment or annulment of some of the provisions of the legislation in that field in order to ensure fuller respect for real guarantees, in accordance with the law. However, the fact remained that administrative detention was a necessary measure. It was not an arbitrary measure, since it was applied in strict conformity with the law.

24. Concerning freedom of religion, it should be remembered that the vast majority of the Vietnamese people had traditionally practised the Buddhist faith, which was more a code of conduct than a religion in the strict sense of the term. However, in the era of foreign interference and neo-colonialism, the invaders had exercised a monopoly of a religious nature and had attempted to impose catholicism. After the war, the Catholic Church, while admitting that it had been wrong in collaborating with the enemy, had pleaded that it should not be publicly branded as a traitor and that the guilty parties should not be brought before the courts. It had also appealed to all Vietnamese to forget the past and look to the future. Accordingly, only a small number of persons had been placed under house arrest, without being brought to trial, and they had been able to live comfortably without further harassment. Nevertheless, foreign organizations had subsequently protested against what they regarded as the arbitrary arrest of ministers of religion and a violation of freedom of religion in the country. It was obvious that such accusations were totally unfounded. A number of Communists had been incarcerated arbitrarily in the previous era, although history had subsequently proved that they had played a heroic role in Viet Nam's destiny.

25. At the present time, any person placed under arrest had to be brought before the courts, as she herself had ascertained from the Ministry of Justice. Her delegation invited the Committee, as well as organizations such as Amnesty International, to seek direct information concerning the real situation in Viet Nam and the course of action that the country was actually pursuing in its efforts to ensure respect for justice and humanitarian law.

26. Mrs. HIGGINS thanked the Vietnamese delegation for providing the Committee with information to supplement that contained in the initial report. However, she regretted the fact that the delegation had not given clear and systematic replies to the specific questions that had been raised.

27. The replies of the Vietnamese delegation seemed to confirm the impression that pluralism had not yet been really established in the country and that, even if the Communist Party had introduced internal reforms and was paying more attention to aspects of political life concerning human rights, problems were still being encountered in regard to the exercise of the right to self-determination. Furthermore, although the Vietnamese delegation had amply

portrayed the situation in Viet Nam from various standpoints, it had not referred to the practical application of the Covenant, which constituted the Committee's principal concern.

28. On the subject of the re-education programmes provided for persons who had participated in crimes against humanity, she wished to know whether there was any tangible proof that all the persons who had been interned in the re-education camps had actually participated in crimes of that nature. She also wished to know which courts had determined their guilt, which persons were affected, and when they had been put on trial.

29. Concerning freedom of movement, the Vietnamese delegation had stated that permission to leave the country could be granted to persons wishing to study abroad, to live there or to make private visits, subject to various conditions laid down in the legislation. However, the Committee had no knowledge of those conditions and, particularly, of whether they were in accordance with the provisions of article 12, paragraph 3, of the Covenant. With regard to the "boat people" who were leaving the country illegally, she found it difficult to believe that they were all persons whose rights had been subjected to restrictions in accordance with the provisions of article 12, paragraph 3, of the Covenant and, in reply to the statement made by the Vietnamese delegation, she pointed out that it was not contrary to the provisions of the Covenant to seek better living conditions in another country. On the subject of administrative detention which, according to the Vietnamese delegation, did not constitute an illegal measure, in so far as it derived from a decree of the Council of State (a permanent organ of the National Assembly), she pointed out that the Committee viewed the situation from the standpoint of international law and, consequently, she wondered whether that decree was compatible with the provisions of article 9 of the Covenant, which guaranteed liberty and security of person. She also wondered why the Vietnamese delegation had affirmed that administrative detention was often "necessary", since it should constitute an exceptional measure.

30. Concerning the detention of ministers of religion and members of some religious communities, she fully realized that no one should be above the law. However, the Committee would be interested to know the provisions of the law under which those persons had been detained. For example, in matters relating to what the Covenant referred to as "freedom of expression", it was insufficient merely to state that those persons could not be above the law and there was cause to ascertain whether the law suppressed freedom of expression or supported it through political pluralism. She had been disturbed to learn that, instead of being brought before the courts, those persons had been placed under restricted residence in comfortable conditions. Far from applauding such a practice, the Committee was entitled to wonder whether the law under which those persons had been detained was compatible with the Covenant. Even if it were, those persons should still be promptly brought before a court and tried, in accordance with the provisions of the Covenant.

31. She was also interested in the question of the relationship between the former laws and the new decrees that had been promulgated in the light of the current process of reform. She had the impression that there was some confusion as to which law prevailed, and she had received no reply on that subject.

32. In conclusion, she noted that Viet Nam's report (CCPR/C/26/Add.3) had been carefully prepared. She hoped that, on their return to their country, the members of the Vietnamese delegation would study the summary records of the Committee's meetings at which the report had been considered, so that the dialogue could be pursued and so that the State party would have a clearer idea of the type of information that the Committee needed in order to be able to help that country in its extensive renovation programme.

33. Mr. MYULLERSON said that the information provided by the Vietnamese delegation had given the Committee a broad insight into the changes that were taking place, as well as the process of renovation and the economic policy, on which more details had been given than in the replies to the members' questions concerning the application of the Covenant. Although the Committee's role was to examine the extent to which the legislation and practice of the State party was in accordance with the Covenant, a whole series of questions which the members of the Committee had raised on that subject had remained unanswered.

34. Like Mrs. Higgins, he had not fully understood the reply given on the subject of the re-education camps. He had gained the impression that the detainees in those camps were persons who might otherwise have been executed. However, such a practice was not in accordance with the provisions of the Covenant. With regard to the question whether those persons were detained in re-education camps under a court order or an administrative decision, he had not understood the reply. If such detention resulted from an administrative decision, that practice was not compatible with the provisions of the Covenant.

35. Other points also remained unclear. For example, it had been asked whether discrimination was being practised against persons who had supported the régime in South Viet Nam during the war. The Vietnamese delegation had replied in the negative and had named several present-day leaders who had occupied important posts in the former South Vietnamese régime before reunification. If that were the case, why were the re-education camps needed?

36. With regard to the arrest of members of some religious communities, he shared the Vietnamese view that everyone should be answerable for his acts before the law, regardless of whether or not he belonged to a religion. However, the question raised by the members of the Committee had been different and significant; the matter at issue was whether the religious persons concerned had been arrested on the charge of engaging in certain political activities, such as propaganda against the socialist system or the production or dissemination of anti-socialist literature, which was punishable by detention under article 82 of the Vietnamese Penal Code. If that were the case, it was questionable whether the presence of such provisions in the Penal Code was compatible with the Covenant.

37. Finally, although the report itself had been regarded as satisfactory, attention had already been drawn to its lack of statistics. He hoped that Viet Nam's next report would take account of the comments made by the members of the Committee. In conclusion, he expressed his personal liking for Viet Nam, a country that he had come to know through his Vietnamese students, who had shown great diligence in their studies, despite the difficulty of the Russian language. He wished the Vietnamese people every success in its renovation policy.

38. Mr. AGUILAR URBINA thanked the Vietnamese delegation for its frank and copiously illustrated replies and said that the report submitted by the State party had been well prepared and had observed the general guidelines laid down by the Committee. Unfortunately, like Mrs. Higgins, he was disappointed that almost all his questions had remained unanswered. He intended to confine his comments to some of those questions.

39. Firstly, almost nothing had been said concerning the People's Control Commissions (to which reference was made in paragraph 14 (d) of the report), although most of the members of the Committee had expressed concern in that regard. Secondly, he had not fully understood the reply concerning the re-education camps. In particular, he was disturbed by the argument put forward to justify the re-education measures, namely the assertion that almost the entire population of South Viet Nam should have been sentenced to death for the commission of crimes against humanity. An entire population that had committed crimes against humanity could only have committed them against itself, which would be tantamount to a veritable suicide.

40. Moreover, when the Committee expressed doubts concerning the legality of particular measures, it was questioning their conformity with the Covenant. Although the Vietnamese delegation had mentioned legality in regard to the religious leaders it had merely indicated that they had been arrested in accordance with the law, without specifying the provisions of the law and without referring to the Covenant. He found that disturbing, since he had the impression that the law contained a fundamental provision that might be incompatible with the Covenant. Finally, in regard to discrimination, nothing had been said about the leaders of the former South Vietnamese régime and the persons closely associated with that régime or about minorities.

41. In conclusion, he wished the Vietnamese Government success in its renovation policy.

42. Mr. POCAR endorsed all the comments that had been made by the other members of the Committee, thanked the Vietnamese delegation for the information that it had provided, particularly that concerning the process of renovation and reorganization, and welcomed the delegation's frank acknowledgement that much still remained to be done in Viet Nam in the field of human rights.

43. Like the previous speakers, he had the impression that Viet Nam was still far from being a State subject to the rule of law. Although legislation had obviously been promulgated and was respected, he wondered whether the law, as it existed in Viet Nam, was in accordance with the provisions of the Covenant. The replies that had been given had led him to believe that, in several of the fields that had been discussed, practice was in keeping with Vietnamese law but was far from being in accordance with the Covenant. He referred, in particular, to the re-education camps and the administrative detention procedure which, although they might be permitted by the law, were incompatible with international norms. The same applied to freedom of religion; in that context, although the persons in question might have been arrested in accordance with the law, on the basis of the information provided at the current meeting he doubted whether that law was in conformity with the provisions of the Covenant concerning freedom of opinion and expression.

44. The replies given on the subject of freedom of association had indicated that the State party was in the process of promulgating legislation on that subject and would therefore be able to provide more extensive information in future. However, a practice was certainly being pursued in that connection and he wished to know whether that practice was based on the discretionary power of some authorities or whether, on the contrary, it was compatible with the provisions of the Covenant. That was an important point, since the protection of human rights depended largely on the information made available to the population in order to make the latter aware of its rights and enable it to use the existing means of recourse. The fact that the task of disseminating that information was frequently undertaken by associations for the defence of human rights highlighted the importance of the right to freedom of association.

45. There were other fields in which he had not received a reply to his questions. However, he noted that the members of the Vietnamese delegation and its Government had expressed a commendable willingness to co-operate and provide additional information on many questions. He was convinced that the dialogue that had begun would continue and would be useful for the promotion of human rights in Viet Nam.

46. Mr. WENNERGREN said that he had learnt a lot about Viet Nam from the interesting information that the Vietnamese delegation had provided during the meeting, and he thanked that delegation for its frankness.

47. He emphasized the universal nature of the Covenant, which was illustrated by the fact that almost all its articles began with the words "Anyone", "Everyone" or "All persons". In other words, all persons living in the territory of the State party should enjoy the rights set forth in the Covenant and, even if some restrictions were permissible, that fact should be constantly borne in mind. However, he was not sure that it was being taken into account in Viet Nam.

48. Article 2, paragraph 2, of the Covenant stipulated that "each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant". While listening to the Vietnamese delegation, he had had the impression that it was admitting that its country had not had time to adopt the measures in question. He knew that Viet Nam was in the process of revising its Constitution, together with other legislative texts, and he sincerely hoped that the second periodic report would focus primarily on the application of article 2, paragraph 2, so that the Committee would have an idea of the steps taken to adapt the legislation in a manner consistent with the Covenant. Much still needed to be done in Viet Nam. In conclusion, he wished that country every success in its process of renovation.

49. Mr. EL-SHAFEI welcomed the fact that the Vietnamese delegation was led, not by a member of the Executive, but by the President of the Legislative Commission of the National Assembly, in other words by a member of the legislative authority. In making that choice, the executive authority had in a way expressed its desire to fulfil the international obligations that it had assumed by signing the Covenant. The Vietnamese delegation had acknowledged

that its country's accession to the International Covenant on Civil and Political Rights in 1982 was a fact which for several years had not been widely known among its population, probably as a result of bureaucratic inertia.

50. He noted that the laws in force in Viet Nam were to be reviewed and he had been glad to learn that the provisions of the Covenant would be taken into account during that review. However, he also pointed out that there were discrepancies between some of the laws and decrees in force in Viet Nam and the provisions of the Covenant. Various comments had been made in that regard by the members of the Committee, who had raised questions which had not all been answered in a satisfactory manner.

51. In conclusion, he expressed the hope that the Vietnamese delegation would agree that the discussion had taken place in a cordial atmosphere and that a fruitful dialogue could be established.

52. Mr. ANDO welcomed the information that had been given on the process of renovation and acknowledged the quality of Viet Nam's written report. However, he had been disappointed by the delegation's oral replies. Many questions had remained unanswered, particularly in regard to the precise status of the Covenant in the Vietnamese legal system; the institution of the People's Control Commissions (to which reference had been made in paragraph 14 (d) of the report) from the standpoint of the independence of the judicial authority; the restrictions on freedom of expression and their compatibility with the provisions of the Covenant; and, finally, the role and functioning of the re-education camps.

53. He acknowledged that the problems encountered in regard to human rights should be considered in the light of the culture and history of each country. Nevertheless, he also pointed out that the aim of the international protection of human rights was to formulate universal norms, recognized by all States, on the basis of which it would be possible to co-operate with a view to identifying, and endeavouring to overcome, the difficulties that a State might face in that connection. That was the aim that the Committee was pursuing and he hoped, therefore, that all the questions raised during the discussion that had taken place would be brought to the attention of the Vietnamese governmental authorities and the general public, since he was convinced that the problems relating to human rights could never be solved unless public participation could be secured through information. In conclusion, he expressed the hope that the questions to which replies had not been given would be answered in Viet Nam's next periodic report.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 987th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 July 1990, at 3 p.m.

Chairman: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Viet Nam (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.987/Add.1.

This record is subject to correction.

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GE.90-16592/3924a

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Viet Nam (CCPR/C/26/Add.3) (continued)

1. Mr. FODOR said it was a brave step for Viet Nam to have become a party to the Covenant so soon after the war had ended and the country had been reunited: even States in which conditions were much more favourable for the protection of human rights had experienced considerable difficulties in implementing the Covenant. At the time of Viet Nam's accession, its new Constitution had only just been adopted, and a number of laws of paramount importance for the effective implementation of the Covenant had not yet been revised. The process of reform of the legal system was still under way, which could be one of the reasons for the shortcomings and difficulties that had been identified.

2. Article 2(1) of the Covenant required States parties to respect the rights of individuals without distinction as to "political or other opinion". There was no mention anywhere in the report of Viet Nam of protection against discrimination on such grounds. If the omission reflected the fact that political freedom was contrary to certain provisions of the Constitution, it would be a matter for considerable concern. It was difficult to see how a society could be free from discrimination on grounds of political opinion if such discrimination was not prohibited by the laws of the country.

3. Article 8, paragraph (3)(a) of the Covenant prohibited "forced or compulsory labour". Although paragraph 3 (c) listed a number of specific exemptions to that clause, in his view the imposition of forced labour without a fair trial and sentence was not in compliance with the spirit of the Covenant. It was likewise difficult to see how the application of so-called "re-education" measures could be consistent with the Covenant's provisions. His doubts in regard to other issues such as the independence of the judiciary, the method of appointing judges, the power of the State Council to interpret laws, and the role of the People's Control Commissions had still not been allayed. In addition, there were a number of other questions which had not been sufficiently addressed in the course of the Committee's dialogue with the Vietnamese delegation: they included measures taken to implement article 4 of the Covenant, the wide range of offences for which the death sentence could be imposed, deprivation of citizenship, pre-trial detention, and the issue of presumption of innocence. He hoped that further information on those matters would be forthcoming in the next periodic report.

4. Ms. CHANET said she was grateful to the Vietnamese delegation for its willingness to engage in a dialogue with the Committee. Although the report had been submitted late, it was a good report, and clearly presented, and showed that much had been achieved as a result of the policy of "renovation". The formulation of a new Penal Code based on the principle of presumption of innocence, and a revision of the laws governing trial procedures and conditions of detention, were not inconsiderable achievements.

5. Despite the progress achieved on paper, however, it would seem that in reality the situation in Viet Nam was still far from meeting the requirements of the Covenant. Among the many issues on which members had expressed concern

was that of detention without trial: although such detention might possibly be legal as far as Vietnamese domestic law was concerned, it was certainly not compatible with article 9 of the Covenant and was not normally imposed following the sentence of a court. Similarly, the penalties imposed for a whole range of offences which were clearly offences of opinion, such as speaking against the revolution, or disseminating "anti-socialist" literature, were difficult to reconcile with article 18 of the Covenant. The explanations given in the report for the use of force to prevent what were known as "illegal departures" were likewise difficult to reconcile with article 12(2) of the Covenant, which guaranteed the right to leave any country, including one's own. She had not fully understood the reply given by Mrs. Thanh on the subject of the "re-education" camps, and could not see how the practices followed in such camps could be compatible with article 8 of the Covenant.

6. She had been particularly struck by Mrs. Thanh's statement that Viet Nam had no tradition as a State subject to the rule of law (Etat de droit). She understood that that situation was the result of historical developments, and that Viet Nam still had far to travel down that particular road. However, accession to the Covenant, under which the protection of human rights was not simply a goal for State parties to aim at but a binding obligation, was surely a step on the way towards the estabishment of the rule of law, and should require the setting up of institutions which would effectively guarantee that it was maintained. She hoped that Mrs. Thanh would succeed in convincing her Government of the need for change, and that the second periodic report would show more definite progress.

7. The CHAIRMAN said that the Committee had now concluded its consideration of the initial report of Viet Nam. He thanked the Vietnamese delegation for its willingness to co-operate with the Committee in a constructive dialogue.

8. As far as presentation was concerned, the format of the report was a model of its kind. Regarding its content, however, despite the improvements brought about by a series of legislative reforms under the policy of "renovation", there were still a number of areas of concern to the Committee in regard to the protection of rights recognized under the Covenant. He would appreciate it if the Government of Viet Nam would in due course provide answers to the questions raised by members, and also give information on any practical difficulties encountered in implementing laws and judicial procedures designed to ensure to its citizens the rights recognized under the Covenant.

9. Mrs. NGO BA THANH (Viet Nam) said it had been an exciting experience for her delegation to come to Geneva to co-operate with the Committee, even though her country had not yet succeeded in fully meeting members' expectations. Her delegation appreciated the frank suggestions made. Viet Nam fully realized the need for change, and in fact was already changing, and she hoped that, by the time the second periodic report was submitted, she would be able to identify many improvements. Many of the concepts discussed in the Committee were unfamiliar in Viet Nam, and the country would need time to become better acquainted with how matters were ordered in the rest of the world. Her delegation would be happy to return to the Committee on the occasion of the next periodic report to continue the dialogue that had been initiated.

The public meeting rose at 3.45 p.m.

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SUMMARY RECORD OF THE 988th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 July 1990, at 10 a.m.

Chairman: Mr. DIMITRIJEVIC

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Organizational and other matters (continued)

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The meeting was called to order at 10.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

General comment on article 23 of the Covenant (CCPR/C/39/CRP.2)

1. The CHAIRMAN invited the Committee to consider the draft general comment on article 23 of the Covenant submitted by the Working Group under article 40 of that instrument (CCPR/C/39/CRP.2).

2. Mr. POCAR, Chairman-Rapporteur of the Working Group, said that the text before the Committee had been drawn up by the Working Group in the light of the original draft prepared by Mr. El-Shafei, the draft formulated by the Working Group at the Committee's thirty-eighth session in New York, and comments on the latter made during the discussion at that session.

3. Paragraph 1 referred to the various provisions of the Covenant relevant to questions concerning the family, but, in deference to the opinion expressed by a number of members of the Committee, mentioned no other international instrument. Paragraph 2 contained a definition of the family for which the Working Group had endeavoured to take into account the various suggestions put forward at the thirty-eighth session, particularly in regard to the varying concepts of the "family" that might be recognized in different legal systems. Paragraph 3 dealt with the protection of the family and with the legislative, administrative or other measures that States parties should adopt. Paragraph 4 elaborated upon the provisions set out in article 23, paragraphs 2 and 3, of the Covenant, which had been combined because both paragraphs dealt with marriage. Paragraph 5 addressed some aspects of the right to found a family. The sixth and last paragraph included all the questions covered by article 23, paragraph 4, of the Covenant.

4. The CHAIRMAN invited members of the Committee who wished to do so to begin by giving their general opinion on the text as a whole.

5. Mr. EL-SHAFEI noted that the Working Group's draft took account of all the points raised by members of the Committee on the previous versions, and considered that the text was clear and comprehensive. It reflected almost all the ideas expressed in the original draft that he had prepared. The draft clarified article 23 of the Covenant and the concept of the family and, because it contained no reference to other international instruments, had the advantage of being shorter than the previous versions.

6. The CHAIRMAN invited the members of the Committee to consider paragraph 1 of the draft general comment.

7. Mr. POCAR, Chairman-Rapporteur of the Working Group, drew attention to the differences between the present version and the previous ones. In addition to the fact that there was no reference to any international instrument other than the Covenant, States parties were recommended to give more information about the way in which they were discharging their obligations under article 23. Moreover, the draft dealt not only with the family but also with its members, since article 23 referred to spouses and children. He pointed out that in the original French text, the last sentence of paragraph 6 should begin with the words: "Dans leurs rapports, les Etats parties ...".

8. Mr. ANDO suggested that, in the fourth sentence of paragraph 1 of the English text, a comma should be added between "as such" and "or as a member of a family".

9. Mr. WENNERGREN noted that, whereas article 23 set out the right of the family to protection by society and the State, the text of the general comment spoke only of the State's obligation to protect. A clear distinction should be made between the State's obligation and that of society. In order to do so, in the last sentence of paragraph 1, where States parties were requested to give information on how they were discharging their obligation to provide special protection to the family and the persons composing it, wording such as "and to enable society to do so too" should be included.

10. Mr. POCAR, Chairman-Rapporteur of the Working Group, accepted Mr. Ando's suggestion and said that Mr. Wennergren's remark was also justified. He suggested that the last sentence of paragraph 1 should be amended to read: "In their reports, States parties often fail to give enough information on how the State and society are discharging their obligation to provide special protection to ...".

11. Mr. EL-SHAFEI drew Mr. Wennergren's attention to paragraph 3 of the draft, which dealt with the protection of the family by society. In his view, the text of paragraph 1 as it stood was sufficient.

12. Mr. MYULLERSON said that, while realizing that paragraph 3 explained in detail the role of society in the protection of the family, he considered that it would not be redundant to mention that role in paragraph 1 as well. The State party had to discharge its obligations under article 23 of the Covenant and, since the role of society was mentioned in that article, it should also be referred to in paragraph 1 of the general comment.

13. Mr. FODOR supported Mr. Pocar's proposal, which made the text more precise.

14. Mr. EL-SHAFEI asked why there was a reference to "special" protection.

15. The CHAIRMAN noted that the word "special" did not appear in the Covenant.

16. Mr. AGUILAR URBINA considered that, if the expression was not used in the Covenant, there was no reason to use it in the general comment on article 23.

17. Ms. CHANET endorsed the remarks about that term.

18. Mr. POCAR, Chairman-Rapporteur of the Working Group, explained why he had added the word "special". Paragraph 1 did not deal with the family alone but also with its members. As individuals, family members were protected under other articles of the Covenant. The protection provided for in article 23 differed from the protection under other articles. However, he saw no objection to deleting the word "special".

19. Mr. EL-SHAFEI considered that the word should be deleted.

20. Ms. CHANET proposed, in order to make a clearer distinction between the obligation of the State and that of society to protect the family, to amend the last part of paragraph 1 to read: "In their reports, States parties often fail to give enough information on how the State and society are discharging their obligation to provide protection to the family and the persons composing it". Clearly, the obligations of the State and of society were not the same, but it would be hard to define them more precisely without complicating the text.

21. Mr. EL-SHAFEI declared himself satisfied with the wording proposed by Ms. Chanet.

22. The CHAIRMAN invited the Committee to adopt paragraph 1 of the draft general comment, subject to the amendment to the last sentence proposed by Ms. Chanet.

23. Paragraph 1 of the draft general comment, as amended by Ms. Chanet, was adopted.

24. The CHAIRMAN invited the Committee to consider paragraph 2.

25. Mr. POCAR, Chairman-Rapporteur of the Working Group, said that paragraph 2, which dealt mainly with the concept of the family, was practically the same as in the previous draft except that it had been considered better to speak of "uniform definition" rather than "formal definition" in the first sentence.

26. In paragraph 2 the Working Group had wished to stress the fact that whatever the definition of the concept of the family, which differed widely from one society and one country to another, all the members of the family should be given the protection provided for in the Covenant.

27. Mr. EL-SHAFEI said that he would prefer the Committee to use the term "group unit" in the second sentence of the paragraph. That was exactly the same wording as in article 23, paragraph 1, of the Covenant and was more specific than the term "group of persons".

28. He did not consider that the fourth sentence ("They should also indicate ... the extent of the family relationships encompassed") was useful. It would be enough for States to report, as requested in the preceding sentence, on how the concept of the family was construed. In any case the sentence in English was not clear.

29. Mr. POCAR drew Mr. El-Shafei's attention to the wording of the original French text, which read: "... précisant par exemple l'âge jusqu'auquel les enfants y sont compris ..."; that was quite different from the English, which read: "the age-limit for being considered a child".

30. Mr. AGUILAR URBINA, speaking in connection with the second sentence, said that in Spanish at least the expression "group of persons" was preferable to the expression in the Covenant ("elemento"; in French: "élément").

31. Mr. WENNERGREN considered that, if the age of children were to be mentioned, the idea of "dependent child" should be added.

32. Mr. POCAR proposed, in order to settle the problem of the fourth sentence of the paragraph, that the English version should be reworded to read: "... specifying the age-limit until which a child is considered a member of the family ...".

33. Mr. EL-SHAFEI questioned the validity of the age criterion. In some countries and societies a child was considered a family member for as long as he was still living with his parents, irrespective of age. If the Committee wished to include the idea of age, it would have to add the concept of dependency, as suggested by Mr. Wennergren.

34. Mr. NDIAYE replied that the reference to age was designed to draw attention to the special vulnerability of children, who deserved special protection. Clearly a child of 14 needed greater protection than someone of 25 living with his parents.

35. The CHAIRMAN, speaking as a member of the Committee, argued that in some countries a child ceased to belong to the family not at a specific age but when he himself founded a family. The age criterion should be avoided, for a child could obtain a dispensation to marry when he was under the legal marriageable age. Thus a child could cease to belong to a family for reasons other than age. Moreover, generally speaking, it was better not to give States parties too many examples of what the Committee expected of them. The Committee might consider deleting the reference to age and retaining only the beginning of the sentence, which would end with the words "as they understand it". ("They should also indicate the scope of this concept as they understand it.") It must not be forgotten that the Committee had already adopted general comments on article 24, a provision which dealt expressly with the protection of children.

36. Mr. MYULLERSON, Mr. COORAY and Mr. EL-SHAFEI supported the Chairman's proposal.

37. Mr. PRADO VALLEJO also endorsed that proposal, but asked for the Spanish text to be reworded to read: "... una indicación del alcance del concepto de familia", with the deletion of the words "tal como lo conciben".

38. Mr. AGUILAR URBINA also supported the Chairman's suggestion and in addition to Mr. Prado Vallejo's amendment asked for the word "alcance" to be put in the plural. Moreover, in the following sentence the adjective "extensa" qualifying the extended family should be replaced by "extendida".

39. Mr. EL-SHAFEI said he still considered that the fourth sentence added nothing to the third and would prefer to delete it.

40. Mr. MYULLERSON said he was in favour of deleting the fourth sentence but proposed, so as not to abandon together with it the idea of the scope of the concept, which was fairly important, to add, in the third sentence, after the words "the concept of the family" the words "and the scope of this concept".

41. Mr. AGUILAR, Mr. COORAY, Mr. PRADO VALLEJO and Ms. CHANET endorsed that suggestion.

42. Mr. ANDO asked whether an English-speaking member of the Committee could tell him whether the last part of the first sentence of paragraph 2 was correctly formulated in English. He believed that it would be more correct to say: "to define the concept in a uniform fashion" than to say "to give the concept a uniform definition".

43. The CHAIRMAN noted that there appeared to be a consensus in favour of deleting the fourth sentence as proposed by Mr. El-Shafei and adopting Mr. Myullerson's amendment to the third sentence (to add "and the scope of this concept"). Drafting changes to the Spanish and English texts could be made by the members concerned later on.

44. He believed that it would be better to keep the term "group of persons" and not to reproduce the wording of the Covenant, because it would be difficult to make the change in languages other than English. For instance, in the context it would be difficult to use the word "élément" in French.

45. It was agreed to maintain the expression "group of persons" in all language versions.

46. Paragraph 2, as orally amended, was adopted, subject to drafting changes.

47. The CHAIRMAN invited the Committee to consider paragraph 3 of the draft general comment (CCPR/C/39/CRP.2).

48. Mr. POCAR said that the concept of the protection of the family by society, had been the subject at the previous session of a recommendation by the Working Group to the effect that the meaning of the concept of society should be studied in greater detail. The Working Group had also suggested that it might be helpful to examine the "travaux préparatoires", which had not, however, provided any useful indications. The paragraph had therefore been redrafted to indicate that the protection to which the family was entitled did not necessarily have to be provided directly by the State, which in some cases could entrust it or leave it to other components of society. The Working Group had also tried to define the term "components of society", by mentioning churches or other organs of society. The new version of the paragraph therefore introduced a dual concept: direct protection (granted by the State) and indirect protection (ensured by society), and it posed three important questions: (i) how did the State and society share the task of ensuring the protection of the family?, (ii) to what extent did the State encourage the activities of social institutions in that regard? and (iii) how did the State ensure that such activities were compatible with the Covenant?

49. Ms. CHANET recalled that the Committee was often told by States parties that because of the composition and organization of their society they were unable to ensure the protection of the family themselves. The Committee should therefore realize that there was a risk of abdication of responsibility on the part of States, and paragraph 3 should be drafted in such a way as to make it clear that they had a responsibility to shoulder for which they were accountable. Moreover, it did not seem advisable to mention "churches or other organs of society", because in many countries there were religious institutions that granted protection to the family but were not constituted as churches. Consequently, it would be better not to spell out the meaning of "components of society".

50. Mr. MYULLERSON endorsed Ms. Chanet's suggestions, adding that, even if the authorities of a country entrusted protection of the family to components of society, it was ultimately the State that had responsibility for ensuring that protection under the Covenant.

51. Mr. EL-SHAFEI considered that the words "the choice of which is left to their discretion" in the first sentence of the paragraph was misleading: was the choice between the three types of measure - "legislative, administrative or other" - or as to the content of those measures? He proposed to delete those words in order to avoid any ambiguity. Moreover, he believed that the major problem had been pinpointed by Ms. Chanet and Mr. Myullerson, namely the division of responsibility between the State and society. The Committee should not give States parties the impression that there could be a sharing of responsibilities as far as the protection of the family was concerned. The State alone was responsible in that regard, and for that reason it had to report on the measures it had adopted and those adopted by other institutions, which it could of course encourage to take part in protection efforts.

52. Mr. WENNERGREN also agreed that it was better not to mention "churches" and "other organs of society". The State had the responsibility of protecting the family, either directly or by subsidizing institutions entrusted with that activity. In point of fact, the choice of method was of little concern to the beneficiaries. He therefore proposed to reword the last sentence of the paragraph to read: "In this connection, States parties' reports should indicate how responsibility for affording the family the necessary protection is divided between the State, non-governmental institutions and individuals, whether and to what extent the State gives financial or other support to the latter, and how it ensures that such activities are compatible with the Covenant".

53. Mr. POCAR endorsed the views of the previous speakers, particularly with respect to the last part of the first sentence. The concluding words of that sentence were unnecessary, and in addition the second sentence, in which States parties were requested to provide information concerning the nature of the measures adopted, made it clear that States had discretion regarding the measures to be adopted. He also agreed that the reference to churches and other organs of society in the third sentence should be deleted. He proposed to reword the last sentence of the paragraph so as to begin: "In this connection, States parties' reports should indicate how the necessary protection is afforded to the family by the State and other social institutions ...". That would make it easy to see that it was a question not of how the responsibility was shared, since the Committee apparently agreed that it was entirely incumbent upon the State, but of how in practice protection was granted to the family.

54. Mr. EL-SHAFEI endorsed the criticisms voiced concerning the third sentence of the paragraph and proposed to add, after the words "... since the Covenant also recognizes the right of the family to protection by society," the following words: "States parties' reports should indicate what measures have been adopted by society to ensure the protection of the family". The fourth sentence of the paragraph could then begin: "They should also indicate whether and to what extent the State gives financial or other support to such activities and how it ensures that they are compatible with the Covenant".

55. Mr. NDIAYE observed that if States parties were asked to provide detailed information on the measures of protection adopted by society, the Committee was likely to be frequently swamped by information that was of little relevance to its work. Taking the case of an African country, for instance, he found it difficult to imagine how a State party could report on all the activities of protection engaged in by clans, tribes, different communities, ethnic groups, social and religious institutions, etc. The Committee should be mindful of the extra and quite unnecessary work that that would involve for the State party.

56. Mr. POCAR noted that there was a slight discrepancy between Mr. El-Shafei's proposal to retain only the following words of the third sentence of the text of the Working Group: "In fact, since the Covenant also recognizes the right of the family to protection by society" (the sentence continuing with "States parties' reports should indicate ...") and his own suggestion to retain the sentence and merely delete the words "such as churches or other organs of society". On reflection, however, the shorter version proposed by Mr. El-Shafei did not change the paragraph in any fundamental way and would not generate misunderstanding. He was therefore willing to endorse his colleague's proposal, all the more so because it was on the same lines as recommendations made at the previous session by some members who had pointed out that the Committee lacked experience on the entire question under consideration and that hence it would be well advised to limit itself to formulating relatively simple general comments on article 23 of the Covenant.

57. The last two sentences of the paragraph might therefore read: "In fact, since the Covenant recognizes the right of the family to protection by society, States parties' reports should indicate how the necessary protection is granted to the family by the State and other social institutions, whether and to what extent the State gives financial or other support to the activities of such institutions and how it ensures that these activities are compatible with the Covenant".

58. The CHAIRMAN noted that the combination of the proposed amendments of Mr. Pocar and Mr. El-Shafei highlighted the essential question, formulated by Ms. Chanet, which was the responsibility of the State, upon which it was incumbent to ensure that activities involving the protection of the family were compatible with the provisions of the Covenant. As he understood it, all members agreed to delete the concluding words of the first sentence of paragraph 3 ("the choice of which is left to their discretion"), since the first part of that sentence and the second sentence left no doubt as to the possibility and the nature of the choice open to States parties. He suggested that the Committee should adopt the wording combining the proposed amendments of Mr. El-Shafei and Mr. Pocar to the third and fourth sentences. If there were no objections, he would take it that paragraph 3, as orally amended, was adopted.

59. He then invited the Committee to consider paragraph 4 of the general comment (CCPR/C/39/CRP.2).

60. Mr. POCAR, introducing the new version of paragraph 4, said that it differed very little from the version discussed at the previous session. However, members' comments had been taken into account, notably by deletion of the reference to incest. The new paragraph 4 was in a way a merger of

paragraphs 4 and 6 of the previous version and its content was more detailed than that of former paragraph 4. In addition, a reference to civil marriage had been included, following a proposal by Mr. Mavrommatis.

61. Mr. AGUILAR URBINA considered that in the third sentence of paragraph 4 it would be better to replace the term "degree of consanguinity" by the term "degree of kinship", in order to take account of the actual situation in the majority of States parties.

62. Mr. PRADO VALLEJO, referring to the penultimate sentence of the paragraph, said that in view of the very clear terminology used in article 18 of the Covenant, he would prefer to mention the right to freedom of thought, conscience and religion, which he considered more specific.

63. Ms. CHANET endorsed that view. With regard to form, she pointed out that the French and English versions differed and that the drafting was not very logical.

64. Mr. MYULLERSON said that in the Russian version the word "incest" had been retained, although clearly it should have been deleted.

65. The CHAIRMAN noted that the Committee was adopting an English version of the general comment and that the other language versions would be duly amended on the basis of the final English version adopted.

66. Mr. WENNERGREN, referring to the second sentence of paragraph 4, said he considered that it might be useful to specify that marriage could not be entered into without the free and full "personal" consent of the intending spouses in order to avoid any possible misunderstanding, particularly in States parties where consent could be given by parents.

67. Mr. POCAR fully endorsed Mr. Prado Vallejo's proposal regarding the inclusion of the language that appeared in article 18 of the Covenant. He was not entirely convinced of the need for Mr. Wennergren's proposal, particularly in view of the fourth sentence, which spoke of the free and full consent of "each of the intending spouses".

68. The CHAIRMAN, speaking as a member of the Committee, endorsed the amendments proposed by Mr. Aguilar Urbina and Mr. Prado Vallejo and also shared the views expressed by Mr. Pocar.

69. Since a consensus had emerged, he took it that the Committee had adopted the text of paragraph 4 of its general comment on article 23 of the Covenant, as orally amended.

70. He invited the members of the Committee to consider the text of paragraph 5.

71. Mr. POCAR said that the text of paragraph 5 was in substance similar to the previous version, except that the words "and should not be either discriminatory or compulsory" had been added in the second sentence and that the second part of the paragraph, dealing with family reunification, had been expanded. In that connection, he realized that the problem did not arise only in the case of migrant workers and refugees, but that other similar situations, involving problems of international law, might also occur.

72. Mr. ANDO said he was aware that the majority of States parties had adopted family planning policies, but that was not necessarily so in all countries. He therefore proposed to amend the beginning of the second sentence of paragraph 5 to read: "When States parties adopt family planning policies, they should be compatible ...".

73. Mr. EL-SHAFEI pointed out that there was no article of the Covenant specifically dealing with family planning and that States parties might therefore wonder what the words "compatible with the provisions of the Covenant" meant. The Committee must refrain in its general comments from referring to questions that were not covered by the Covenant itself.

74. Mr. WENNERGREN considered that because of the threat of over-population throughout the world, family planning questions should be given special attention. There might be cause for concern at the compulsory birth control measures such as those in force in China, for instance. However, since there was no article in the Covenant specifically guaranteeing the right to procreation, it would be better for the Committee to refrain from any comment on that subject.

75. Mr. ANDO recalled that article 18 guaranteed the right of everyone to freedom of thought, conscience and religion and that, according to article 6, every human being had the inherent right to life. He therefore considered that any family planning programmes should take account of the freedom and dignity of the person.

76. Ms. CHANET said that she too believed that it would be better for the Committee to refrain from making over-specific comments on questions on which almost all the articles of the Convention might be invoked. In addition, the draft considered the question of family planning only from one angle, whereas there were many other problems, for instance the prohibition of abortion or the obligation for women to have a minimum number of children. In her view, the second part of the second sentence of paragraph 5 should be deleted entirely.

77. Mr. PRADO VALLEJO, referring to the last sentence of paragraph 5, pointed out that the reasons for which family members were separated were not solely political or economic. The wording used in paragraph 5 might therefore be expanded.

78. The CHAIRMAN said that Mr. Pocar would draft a new version of paragraph 5 taking account of all the comments made, for consideration by members of the Committee at a later meeting.

The meeting rose at 1 p.m.